IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3100 OF 2005

Himmatlal Kothari ..Petitioner
Vs.
Union of India & Ors. ..Respondents

Mr.Raju Moray with V.S.Talkute for the Petitioner.
Mr.R.V.Desai, Senior Advocate with Ms.S.V.Bharucha
and Ms.Nisha Valani with Mrs.Lata Patne for the
Respondents.

CORAM :- DR.S.RADHAKRISHNAN &
V.C.DAGA, JJ.

DATE : 30TH APRIL, 2007

P.C.

1. Heard the learned Counsel for the parties.

Rule. Rule is made returnable forthwith. The learned Counsel for the Respondents waives service. By consent, taken up for hearing.

2. By this Petition, the Petitioner is challenging the order dated 14th October,2005 whereby the Appellate Tribunal for Foreign Exchange had directed the Petitioner to deposit 30% of penalty of Rs.12,80,000/- within a period of 45 days, failing which the Appeal will be dismissed on this ground alone. The learned Counsel for the Appellant states that the Appeal is still pending.

3. The main grievance of the Petitioner is that he is carrying on a business by name Anand Enterprises and now he is not in a financially sound condition.

The Petitioner has filed an affidavit-cum-undertaking dated 24/04/2007 indicating that the Petitioner, along with his wife is running a small fabrication workshop, wherein the Petitioner is having machinery worth Rs.6,49,500/-. The Petitioner and his wife are the partners in the said partnership, which runs the same business. We have perused the Income-Tax Return filed by the Anand Enterprises as well as Petitioner's individual Income-Tax Return. A perusal of the same indicates that the Petitioner is having financial difficulties. Under the aforesaid facts and circumstances of the case, we quash and set aside the order dated 14/10/2005 passed by the Appellate Tribunal for Foreign Exchange and remand back the Appeal. The Appellate Tribunal for Foreign Exchange to hear and dispose of the Appeal on its own merits in accordance with law, without insisting upon any pre-deposit. However, the Petitioner to file affidavit-cum-undertaking before the said Tribunal that he and his wife will not dispose of the aforesaid machinery worth Rs.6,49,500/- till the disposal of the Appeal, as indicated in the aforesaid affidavit.

4. Rule is made absolute in terms of the above. Hearing of the Appeal before the said Tribunal is expedited.

(V.C.DAGA,J.) **(DR.S.RADHAKRISHNAN,J.)**